

rate so as to vary the height of the volume of the vessel from a minimum to a maximum over a period of one hour,” as asserted in paragraph 1 of the Action. Instead, the tubes fill one by one to their full heights to show the passage of time minute by minute, and do not show time by the varying height of the water in the body of the device as claimed.

The rejected claims also require that the water inlet be arranged substantially tangentially to the body of the vessel. Hess’s inlet 32 is definitely *not* arranged tangentially to the body 38 as contended by the Examiner. FIG. 4 shows that the inlet 32 (called discharge tube 32 by Hess) is arranged so that its mouth (at the lower end of the discharge tube 32) lies *centrally* of the upper end of the body 38 and not tangentially as required by claim 1 of this application. Hess’s discharge tubes 30 and 34 likewise are not arranged tangentially to the body of the device. It is impossible for the inlet arrangement shown in Hess to achieve the claimed rotational movement of the volume of water in the body of the Hess device. For these reasons, Hess does not identically disclose (or suggest) the invention of claims 1-4 and 7, and the anticipation rejection should be withdrawn.

Claims 1, 5 and 6 stand rejected as anticipated by Sonnweber. This rejection is respectfully traversed.

Sonnweber discloses a simple esthetic water feature having a cylindrical vessel 1 which stands in a reservoir 3. A pump 6 forces water into the vessel 1 via tangential inlet 5 so that a vortex 2 is formed in the vessel 1. However, in contrast to the Examiner’s suggestion, Sonnweber does not disclose a “controller” for varying the height of the vortex 2 in the vessel 1. Sonnweber simply teaches that the flow rate of the pump 6 (not “controller 6” as asserted by the Examiner) should be selected such that the vortex 2 fills the vessel 1. Sonnweber also states that, if additional water is provided in the vessel 1, the water will simply overflow the vessel 1 and fall back into the reservoir 3. There is no suggestion, implicit or explicit, that the flow rate of the pump can be, or is, controlled in a manner which allows the height of the vortex 2 to be varied in the vessel 1 once the preferred height has been selected. This rejection should be withdrawn.

Claims 8 and 16-19 stand rejected as anticipated by Koenig. This rejection is respectfully traversed.

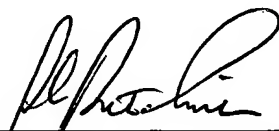
The disclosure in Koenig relates to a water feature basin which is specially shaped to have a reducing cross-section and a tangential inlet. Water is allowed to flow into the basin under gravity. A vortex is created by the water swirling in the basin. The height of the vortex builds up and, at a critical point, the vortex collapses. This effect therefore relies upon the attaining of an unstable condition to achieve the desired effect. Koenig does not disclose a controller which varies the height of the vortex. Indeed, there is no disclosure of any sort of variation in or controlling of the flow rate of the incoming water. Indeed, Koenig teaches the exact opposite of this invention, which is the controlled variation of the height of a rotating volume of water.

For the foregoing reasons, early action allowing claims 1-20 in this application is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 532412000100.

Dated: November 18, 2004

Respectfully submitted,

By: 
Barry E. Bretschneider
Registration No. 28,055

Morrison & Foerster LLP
1650 Tysons Boulevard, Suite 300
McLean, VA 22102
Telephone: (703) 760-7743
Facsimile: (703) 760-7777